

# **Exhibit A**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 DREW DIXON,

4 Plaintiff,

5 v.

23 CV 09878

6 ANTONIO MARQUIS L.A. REID, ET  
7 AL,

8 Defendants.

Conference

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9 New York, N.Y.  
10 November 18, 2024  
4:00 p.m.

11 Before:

12 HON. VALERIE E. CAPRONI,

13 District Judge

14 APPEARANCES

15 BOIES, SCHILLER, FLEXNER, LLP

Attorneys for Plaintiff

16 BY: KENYA DAVIS

DANIEL CRISPINO

17 AMBER STEWART

18 KINSELLA, HOLLEY, ISER, KUMP, STEINSAPIR, LLP

Attorneys for Defendants

19 BY: GREGORY KORN

20 BOBBI STERNHEIM  
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(Case called; appearances noted)

THE COURT: Okay. As I recall, Ms. Davis, you took the labor for last time. Are you going to be taking the labor for this time?

MS. DAVIS: Yes, your Honor. I also have Daniel Crispino and Amber Stewart on as well.

THE COURT: Yes, they are on as well.

Who's going to be talking primarily for the defendant?

MR. KORN: Your Honor, this is Greg Korn. I can address a number of issues, and maybe I can speak primarily and there may be some issues that Ms. Sternheim can speak to primarily.

THE COURT: Okay. That's fine. I just want to know who primarily is going to be talking.

Let me remind you of the rules of the road. On the telephone conference, you need to identify yourself each time you speak, and if you hear the bell that indicates someone has come on the line, please stop talking long enough for me to make sure that I still have the court reporter on the line.

I do have the court reporter, right, just to confirm?

COURT REPORTER: Yes, your Honor. I'm here.

THE COURT: All right. So I think, Ms. Davis, it seems like this is your issue, so tell me what's the issue.

MS. DAVIS: Yes, your Honor. So this issue became clear to us during our second deposition of Mr. Reid. We had

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1 received from Ms. Kwak, who is one of our other witnesses we  
2 had deposed, indications she had text messages with Mr. Reid  
3 about this particular case. They were not text messages that  
4 were provided in response to your order that you issued on the  
5 11th. We got the response of that on the 18th, 17th or 18th,  
6 and we got two text messages.

7 We didn't receive -- we received like a pdf. We  
8 didn't receive the native file. And we got, you know, one or  
9 two blurbs, as opposed to the entire string, which is what we  
10 produce when we produce text messages.

11 So I asked Mr. Reid about those messages, because at  
12 some point Mr. Korn did produce them to us. So in looking at  
13 those messages from Ms. Kwak, we noticed that --

14 THE COURT: I'm sorry. How do you spell that?

15 MS. DAVIS: K-w-a-k, and that's Karen Kwak.

16 THE COURT: What's her involvement in this case?

17 MS. DAVIS: She was his assistant at the time of the  
18 assault.

19 THE COURT: Okay.

20 MS. DAVIS: We were deposing her about that time.  
21 Yes, your Honor.

22 THE COURT: Okay. Go ahead.

23 MS. DAVIS: Yes. So we got the messages from  
24 Mr. Korn, and we asked Mr. Reid about them during his  
25 deposition. And at first he was saying, you know, we gave him

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1 a few, ah -- because we didn't see his responses to many of  
2 these questions, so we were asking, did you issue voice notes?  
3 Did you call the person? There were several responses he gave,  
4 maybe, possibly, but then we pointed out to him that there  
5 were -- and I don't know if you have this on your phone, but  
6 there are bubbles that come up as you're rehashing, because  
7 someone's responding to your phone message, right, emphasize,  
8 love, like. Right?

9 THE COURT: Yes.

10 MS. DAVIS: So we didn't get those from Ms. Kwak on  
11 Mr. Reid's side, so I asked him about those, and he said, I  
12 believe I can delete my messages. He said something to the  
13 effect that there's a rule against that. I can delete my  
14 messages.

15 Of course the bells went off, because, one, he  
16 received his preservation notice in this case in January of  
17 '23. That's nearly two years ago. And, two, you know, we had  
18 gone through this process of extensive discovery, discussions  
19 and negotiations back and forth with defense, and we couldn't  
20 -- we were having a hard time thinking about the fact that  
21 these messages had been deleted by Mr. Reid, but also that  
22 defense had represented that they had reviewed these messages.  
23 And it hadn't occurred to them that these messages had been  
24 deleted.

25 Now, what we've been offered as a remedy for this is

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1 that they will do a redo of his devices, and that they will  
2 provide us with access to those devices. I mean access to  
3 the -- access of the documents.

4 We are hesitant to go that route, and that's one of  
5 the reasons why we're raising it with your Honor is because,  
6 one, it's very clear to us that their idea of what his response  
7 is to the search terms is not his responses to the search terms  
8 because they missed his message.

9 Secondly, they're concerned about -- they want to use  
10 their vendors. We're concerned about their vendors because  
11 their vendors were supposedly a part of the review process for  
12 what we have now, and that was not successful.

13 Thirdly, we want an affidavit or declaration of some  
14 point statements from the defendant that he's provided all of  
15 his devices for a forensic review, cell phone, laptop, iPad  
16 hard drive, because it is our impression that he was under the  
17 impression that he should give over whatever he thinks is best  
18 to give over, or he should provide what he thinks is best as  
19 opposed to counsel telling him that he's complying with  
20 counsel's request.

21 So that's where we are. We are asking for leave to  
22 file a motion to give to an adverse inference the foundation,  
23 because it's a two-year inquiry, right? This is not something  
24 where, at least in my prior hearings with the AUSA, there were  
25 many times that, for forensic reasons that -- we can go back

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1 and see what happened a year ago, but two years is a long time.  
2 And so it's my belief that there are things than cannot be  
3 ready. There could have been WhatsApp messages. There could  
4 have been other text message that aren't preserved by the phone  
5 or the system, the cloud, whatever it may be, that we'll never  
6 get back, and we will never know what those messages said. And  
7 so that is why we're bringing it to the Court now.

8 We certainly didn't want to file anything without  
9 having had this conference with you. We did meet with the  
10 defendant and defense and they provided a proposal. We  
11 provided a counter laying out points I just gave you, and we're  
12 at an impasse in terms of how to handle a forensic review.

13 THE COURT: Let me interrupt for a second.

14 MS. DAVIS: Yes.

15 THE COURT: So far the only thing you have said you  
16 are asking for is permission to file a motion for an adverse  
17 inference because of spoliation. Are you asking for me to get  
18 involved in some sort of dispute between you and the defense on  
19 a forensic review of devices and, if so, which devices are you  
20 asking for a forensic review of?

21 Is that forensic review solely for purposes of  
22 ascertaining whether there's been other evidence that was  
23 called for and destroyed or not produced?

24 What exactly is the issue?

25 MS. DAVIS: Yes, ma'am. I'll run it down.

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1           So of course the leave to file the motion, but, also,  
2 we want complete access to the defendant's phone, laptop, and  
3 other devices relevant to during this timeframe in order to run  
4 our own searches for responsive documents. We're fine with his  
5 communications with his spouse and counsel being screened off.  
6 Our vendor would do that pursuant to any application of marital  
7 or attorney-client privilege. But, otherwise, we can't agree  
8 to limit our access on defendant's devices without ability to  
9 run our own search.

10           Secondly --

11           THE COURT: The basis for that is because why? Why am  
12 I supposed to be persuaded that the defendant hasn't done --  
13 putting aside that he thought he was allowed to delete text  
14 messages, why do you need not -- what's my basis for concluding  
15 that the messages and emails and documents that were on the  
16 devices, that the defendant's search wasn't adequate?

17           MS. DAVIS: The reason we know that was not the case  
18 is when your Honor ordered a review, a further review of his  
19 text messages, the text message that is the subject of how he  
20 found all this out was not included in the response that we  
21 received.

22           THE COURT: Well, wait. I thought you said that  
23 Mr. Korn did produce it to you?

24           MS. DAVIS: He produced it after Karen Kwak testified  
25 about it in a deposition and I asked her counsel to produce it.



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1 And Mr. Korn then said, well, I'll produce it to you. But he  
2 didn't -- it was not -- it was not a text message that he  
3 deemed responsive, nor was it a message that he looked at it  
4 and said, oh, there definitely were other messages on the side  
5 of this, I should do a further inquiry. That did not happen.

6 And so that's where our -- our resistance in allowing  
7 them to process this, that's what it's based on.

8 THE COURT: Had you subpoenaed Karen Kwak for relevant  
9 text messages?

10 MS. DAVIS: No. I subpoenaed her for a deposition.  
11 In that deposition -- yes, I understand. There wasn't a  
12 subpoena duces tecum for her.

13 THE COURT: How did this whole text stream come up?

14 MS. DAVIS: So I asked her, because, Judge, if you  
15 will remember, your Honor, one of the reasons why you ordered  
16 him to give us the text messages is because he kept saying,  
17 well, he wouldn't have anything to say about this, it wouldn't  
18 be where he would be talking about this with anyone other than  
19 his counsel.

20 Remember that conversation?

21 And we said, hey, look, there was a newspaper article.  
22 There was a movie that came out. There's, you know, a filing  
23 that was filed. Somebody had to talk to him about this and he  
24 had to talk to somebody about this. And that's why we raised  
25 the issue of there has to be, you know, responsive text

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1 messages after being told that there were not any. And so when  
2 we get to --

3 THE COURT: So then during the deposition of Karen  
4 Kwak, she tells you that there were text communications between  
5 her and Mr. Reid about Dixon's allegations.

6 MS. DAVIS: That's correct. That's correct, your  
7 Honor.

8 THE COURT: All right. So I've got the issue.

9 All right. Mr. Korn.

10 MR. KORN: Yes, your Honor. So I'd like to talk about  
11 the factual part of this, what text messages are at issue and  
12 what was deleted and how that all came about and how we -- why  
13 the text wasn't produced the first time, et cetera. So that's  
14 one side that I want to talk about. And then I also want to  
15 talk about the offer I've made as to the forensic, which we  
16 think is beyond reasonable.

17 Is there one place you'd like me to start more than  
18 the other?

19 THE COURT: No. Why don't you start with why it  
20 wasn't produced.

21 MR. KORN: Yeah. So let me start with the facts. So  
22 the text message has -- the full text string has now been  
23 produced by Ms. Kwak, so let me tell you what's in the text  
24 stream. So most of the text messages between Mr. Reid and Ms.  
25 Kwak have absolutely nothing to do with this. There are

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1 photographs of them hanging out with celebrity musicians.

2 There is talk about --

3 THE COURT: Mr. Korn, stay focused. I don't care that  
4 there was tons of other stuff that was irrelevant and wasn't  
5 produced. The question is, why wasn't the string that was  
6 relevant produced?

7 MR. KORN: The version that was in Mr. Reid's  
8 possession admittedly had a couple of text messages deleted,  
9 and as a result of those messages -- specific messages within  
10 the stream, as a result of those being deleted, it wasn't  
11 evident that the text stream was responsive at all.

12 THE COURT: Well, that then takes it -- how is it that  
13 your client was deleting text messages?

14 MR. KORN: Yes, your Honor. And needless to say it's  
15 something that is disappointing. Ms. Holley is not on this  
16 call, and she apologizes for that. She was going to speak to  
17 this issue, because I personally wasn't involved in the case at  
18 the time. And I can speak for Ms. Holley, you know, who will  
19 tell you she's -- would accept responsibility, that there just  
20 was not a good enough communication with the client on this  
21 issue to ensure that he fully understands that absolutely  
22 nothing could be deleted.

23 What ended up getting deleted, and I should say there  
24 is testimony from Mr. Reid, and it's the only message that he  
25 had with this case, not with counsel, where there was a

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1 deletion, it was -- he was sent a news article about the case  
2 being filed by Ms. Kwak. She then had a reference saying, I  
3 don't like seeing my name involved in this.

4 He said to her, why are you sending me this? And then  
5 he said something like, this woman is a "dangerous liar."

6 That was the full text stream. We accept  
7 responsibility for the fact that Mr. Reid deleted those texts.  
8 We're disappointed about it. We're not happy about it. And as  
9 I said, Ms. Holley will accept some of the responsibility for  
10 it.

11 We do have testimony from Mr. Reid he deleted no other  
12 texts. Now, that notwithstanding, we've agreed immediately  
13 that a new forensic review is justified here. So the proposal  
14 we have proposed is to use a litigation forensic group that  
15 specializes in this work that we've used in the past. We would  
16 pay them. They would do a complete imaging of the phone,  
17 computer, and an iPad if there is one as well. I don't recall  
18 if there is one, but if there is, that would be done.

19 We would make sure that no deleted emails were missed  
20 in the searches that were done previously by the IT expert,  
21 Dwayne Robinson, although we think likely those would have been  
22 covered. We would also, through the imaging in this phone, and  
23 also potentially the searches of phone records, obtain any text  
24 messages that were deleted but are still accessible. And there  
25 are ways to do that, because certain text messages are backed

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1 up in the cloud and can be retrieved from computers. So we  
2 will strive to retrieve everything that can be retrieved.

3 The offer that we further made is while we're engaging  
4 this company, plaintiff's counsel will be provided total access  
5 in terms of communications with the forensic expert. They'll  
6 be allowed to speak with the forensics expert on our time, to  
7 understand exactly what's occurred, and, you know, to speak  
8 about the searches that are going to be done, and to know what  
9 the result of those are. They will have access.

10 Where really the offers depart in terms of the  
11 forensics is that plaintiff's counsel would like to have  
12 complete control, unfettered control over the data, and to run  
13 whatever searches they want to run across the data without  
14 getting our approval or without getting the Court's approval  
15 when inevitably there's a dispute about whether a search is  
16 proper or not. And that's -- when you're considering the fact  
17 that your messages with friends, family, celebrities, it seems  
18 extraordinary to us that opposing counsel would have no  
19 guardrails and truly unfettered access to the phone.

20 And I'm particularly concerned, your Honor, because  
21 some of the questioning of Mr. Reid recently in deposition  
22 demonstrates plaintiffs and defense counsel do have very  
23 different ideas of what's in bounds. And by way of an example,  
24 Mr. Reid has been recently asked about consensual relationships  
25 which have nothing to do with this case and are not relevant.

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1 He's been asked whether he does drugs. By the way, he doesn't.  
2 He's been asked whether he allows friends of his to do drugs in  
3 his presence. These things are simply not relevant, and so I  
4 have -- frankly, just don't think it's appropriate to give  
5 opposing counsel total unfettered access and the discretion to  
6 run any searches they want on all of his text messages, his  
7 internet search history, his financial data that's on the  
8 phone, et cetera.

9 So the real difference is we would control the data.  
10 We would run the searches that plaintiff's counsel wants to  
11 run, but if there's a dispute, we bring it to your Honor and  
12 you make a ruling. We give your Honor access to all of the  
13 data retrieved by way of the searches, with the exception of  
14 attorney-client privileged communications, so they can do a  
15 responsiveness review themselves.

16 It just really boils down to I don't think they should  
17 be allowed to run any search they want to run.

18 THE COURT: Wait a minute. I'm sorry. You're going  
19 to give them full access to the imaged data minus  
20 attorney-client and marital privileged material?

21 MR. KORN: No, your Honor. Almost.

22 THE COURT: Yes, I thought that wasn't right.

23 MR. KORN: When the searches are run --

24 THE COURT: I see. Give them full hits.

25 MR. KORN: Correct. They would get all of the hits,

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1 minus privileged communications, and which would include -- I  
2 think we should have the right to review communications with  
3 his spouse, obviously, so that would be included within the  
4 privilege.

5 THE COURT: All right. So, Ms. Davis, I have to say  
6 that sounds incredibly reasonable.

7 MS. DAVIS: Your Honor, it would be if we did not have  
8 the history with counsel. He did, for instance -- he just made  
9 this representation to the Court about the questions I asked  
10 Mr. Reid about drugs. It was not to get at whether or not Mr.  
11 Reid used drugs. I could care less. It got to what was  
12 Mr. Reid's credibility, because he had testified that he  
13 doesn't use drugs and no one had used drugs around him. He was  
14 adamant about that. In that text stream with Ms. Kwak, there  
15 clearly was a discussion of drug use going on between the two  
16 of them. It is a credibility issue that we have.

17 The issue around the consensual relationship was not a  
18 -- I did not ask him about consensual relationships. I asked  
19 him about sexual contact with subordinates, and those questions  
20 were very limited and controlled.

21 We are not asking for unfettered access. Like I said,  
22 we would filter out for his counsel. We would filter out for  
23 his spouse. But the fact that Mr. Korn ran search terms that  
24 we all agreed on, and this text message we're talking about  
25 today, which was one of the text messages we discussed in terms

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1 of not getting the full thread, it was missed. It was missed  
2 in his review. It was missed in his bringing -- his applying  
3 the search terms. And so we're concerned that we're going to  
4 find ourselves back before your Honor in a few months having  
5 done this complete process and invested time and money into it  
6 and not having a full review. And something's slipping up  
7 again, because now on a third or fourth slip up in this case,  
8 something comes forth, and we found it, and they say, oh, well,  
9 this is just one time or one instance and we have to go back  
10 and do a full review anyway.

11 So for efficiency purposes, we think it makes sense  
12 for to us to do it the way we asked. So the last point I'll  
13 make is this. He says, well, Mr. Reid admitted to deleting  
14 this one text messages. So I'll tell you exactly what Mr. Reid  
15 said to me as I went through these text messages that I pointed  
16 out may be related, he said, "maybe I deleted it. I don't  
17 know. I think I can delete what I want to delete and not  
18 delete when I feel like it. I didn't know -- I didn't know  
19 that there were rules around it."

20 So that's where the concerns come in. It's not this  
21 one text messages. It's about what else is out there and what  
22 else should be turned over. And my concern is that they won't  
23 turn it over.

24 THE COURT: Except that that's not -- I mean, maybe I  
25 misunderstood. What I understand Mr. Korn to be saying is that



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1 they are going to run searches through -- they're going to  
2 imagine all of the devices. They will run searches that are  
3 agreed with the defense, and if there's a problem agreeing on  
4 the searches, you're going to come back to me with them. And  
5 then other than privilege and marital -- other than privilege  
6 material, so attorney-client privilege and marital privilege,  
7 they're going to turn all of the responsive documents,  
8 everything that hits on the search terms, to the plaintiff, so  
9 you can review them for whatever you want.

10 I don't know how having his expert run the search  
11 terms or your expert running the search terms, what's the  
12 difference? They've agreed to give full returns for everything  
13 that hit.

14 MS. DAVIS: And I'll just state my objection to this,  
15 which is this is -- and this is Kenya Davis, for the plaintiff.  
16 His vendors, you know, his -- the IT person that Mr. Reid had,  
17 the financial person that Mr. Reid had, these are all people  
18 that were trusted to turn over things that would have been  
19 responsive, and that hasn't happened. So that's where my  
20 concern comes for using their vendor.

21 THE COURT: Well, wait a minute. Hang on a second.  
22 The IT expert before was somebody found a company as I recall.

23 Isn't that right, Mr. Korn?

24 MS. DAVIS: No. No. That's Mr. Reid's IT person if  
25 I'm not mistaken. Mr. Korn can correct me.

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1 MR. KORN: Your Honor, this is Greg Korn.

2 Yes, previously, the work was done by an IT  
3 professional that works with Mr. Reid. We have now engaged a  
4 specialty litigation forensics company that Ms. Holley and I  
5 have used in sensitive matters. They're called Setec  
6 Investigations. This is what they do all day every day.

7 THE COURT: Who are the principals of Setec?

8 MR. KORN: The principal, his name is Todd Stefan,  
9 S-t-e-f-a-n. He is the owner.

10 THE COURT: I'm not particularly familiar with them.  
11 But, Ms. Davis, are you familiar with the company Setec or Todd  
12 Stefan?

13 MS. DAVIS: No, your Honor, I'm not.

14 THE COURT: Okay. What I'd like you to do is to do a  
15 little research on him and on the company. But assuming it's a  
16 reputable third-party company that does this kind of stuff,  
17 again, the offer of the defendant is incredibly generous, which  
18 it should be, because the fact that you've got a defendant that  
19 believes that he is entitled to delete text messages and God  
20 only knows what else after a lawsuit has been filed is  
21 disturbing.

22 I appreciate that a lawyer who's not on the phone will  
23 fall on her sword over it, but this is serious. There's no  
24 question it's serious. But this, as an offer of how to set the  
25 plaintiff at ease, that in fact you're getting everything that

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1 is responsive, seems about as good as I would come up with, and  
2 they're offering to pay for it.

3 So it really comes down to whether Setec is a  
4 responsible company, doesn't it?

5 MS. DAVIS: Yes, ma'am. I can see what you're saying.

6 If we do go with Setec, and we appreciate the ability  
7 to be able to review them and, you know, really get clear on  
8 whether or not this is a reputable company, and we have  
9 vendors, too, now, that could do this, but I understand the  
10 concern.

11 THE COURT: I don't think the issue is really whose  
12 vendor is doing it.

13 MS. DAVIS: Right.

14 THE COURT: Because they all pretty much use the same  
15 tools. The real issue is whether the defense is making the  
16 privilege review or the plaintiff is making the privilege  
17 review, and I've never seen a Court order that raw data be  
18 turned over to the plaintiff and we're going to trust them to  
19 create an ethical wall and winnow out privileged material.  
20 That would be highly unusual.

21 MS. DAVIS: Right. My concept of how it would happen  
22 is that the vendor would do the culling for privilege.

23 THE COURT: Well, that is as good as their work is,  
24 but it doesn't necessarily pull everything in, right?

25 MS. DAVIS: Uh-huh.

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1 THE COURT: You're going to get stragglers that,  
2 however they're doing the search, doesn't come up with it.

3 MS. DAVIS: Okay.

4 THE COURT: But functionally, what the defendant is  
5 offering you, is the same thing.

6 So the parties need to meet and -- you need to do some  
7 research on Setec. If there's some substantive issue that you  
8 have with Setec, talk to Mr. Korn. Maybe you can come up --  
9 between you, working in good faith, you can come up with  
10 another vendor that both sides agree is both competent to do  
11 this, has the time to do it, and will comply with the ground  
12 rules there are, that the defense is going to winnow out  
13 privilege material.

14 The parties will agree on search terms. If you can't  
15 agree on search terms, you're going to come to me. And the  
16 plaintiff's lawyer can have full access to the person, the  
17 expert that's doing the work.

18 MS. DAVIS: Okay.

19 THE COURT: Have I correctly stated the conditions,  
20 Mr. Korn?

21 MR. KORN: Yes, you have, your Honor.

22 THE COURT: Okay. So if you can't agree on a vendor,  
23 come back to me, but I'm -- actually, don't come back to me if  
24 you can't agree on a vendor. Agree on a vendor.

25 MS. DAVIS: Yes, ma'am.

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1 THE COURT: There is no reason in the world your firms  
2 can't agree on a vendor. If you have problems on search terms  
3 and you can't agree on what you're going to run on these  
4 images, then you can come back to me, but I would prefer that  
5 you manage to agree on it.

6 MS. DAVIS: Okay.

7 THE COURT: Anything further from the plaintiff, Ms.  
8 Davis?

9 MS. DAVIS: Yes, your Honor. The two things would  
10 have been the declaration affidavit, some sworn testimony or  
11 statement by the defendant under the penalty of perjury that  
12 he's turned over all of the devices. And part of why I'm doing  
13 this is not only for us but for current counsel that he has,  
14 because his allegation to preserve predated current counsel,  
15 right?

16 They were brought on I think at the beginning of this  
17 year, but his obligations started back in January of '23, when  
18 there were other counsel assigned to the case. And so we would  
19 want a sworn statement from him that these are the devices that  
20 would be relevant.

21 THE COURT: All right. Mr. Korn.

22 MR. KORN: As I understand it, it's just a declaration  
23 attesting the devices that he has are being turned over to the  
24 forensics expert. That doesn't sound like that's a problem to  
25 me.

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1 THE COURT: Right. That all devices he used during  
2 the relevant period of time have been turned over to the  
3 forensic expert.

4 MR. KORN: Right. That sounds reasonable.

5 THE COURT: It's premature to talk about a motion for  
6 spoliation. Let's see what it turns up.

7 MS. DAVIS: Yes, ma'am. I understand.

8 THE COURT: There's no question that you've got --  
9 there's no question that he spoliated evidence, but at the  
10 moment, it looks like it was kind of a no harm, no foul, so  
11 let's see if you can find a foul.

12 MS. DAVIS: Yes, ma'am. I understand.

13 THE COURT: All right. So everyone have a nice  
14 holiday.

15 (Adjourned)

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